

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

FREDERICK WAYNE SMITH,

Plaintiff,

v.

KATHLEEN ALLISON, et al.,

Defendants.

Case No. 1:22-cv-01580-JLT-SAB (PC)

ORDER DIRECTING PLAINTIFF TO
INFORM COURT WHETHER ENTRY OF
DEFAULT SHOULD BE IMPOSED ON
DEFENDANT RODRIGUEZ

(ECF Nos. 19, 20)

Plaintiff Frederick Wayne Smith is proceeding pro se in this civil rights action filed pursuant to 42 U.S.C. § 1983.

This action proceeds against Defendant Rodriguez for retaliation, deliberate indifference to safety, and denial of access to the courts, and service of process was ordered under the Court's E-Service pilot program. (ECF No. 18.) Pursuant to that order, the service order, summonses, and the operative complaint were served via email on the California Department of Corrections and Rehabilitation ("CDCR").

On April 11, 2023, CDCR filed a Notice of E-Service Waiver indicating that Defendant Rodriguez intended to waive service. (ECF No. 19.)

On May 11, 2023, a waiver of service of process was filed on behalf of Defendant Rodriguez. (ECF No. 20.)

Pursuant to the Court's E-Service Order, "[a] defendant who timely waives service need not serve an answer to the complaint until 60 days after the waiver of service of process was sent."

(ECF No. 17 at 2.) Further, “[f]or any defendant that the CDCR advises will be waiving service, the date the CDCR files its Notice of E-Service Waiver will be considered the date the request for waiver was sent.” (Id.)

Here, as reflected on the waiver of service of process form, it was acknowledged that judgment may be entered if an answer or motion under Rule 12 was not filed within 60 days after April 11, 2023, i.e., June 12, 2023.¹ (ECF No. 20.) To date, Defendant Rodriguez has not filed a response to the complaint and the time to do so has passed.

Accordingly, it is HEREBY ORDERED that within thirty (30) days from the date of service of this order, Plaintiff shall inform the Court whether entry of default should be imposed against Defendant Rodriguez.

IT IS SO ORDERED.

Dated: June 13, 2023


UNITED STATES MAGISTRATE JUDGE

¹ The Court notes that the docket entry by defense counsel (not the Court) incorrectly reflects that an answer is due 7/10/2023. (ECF No. 20.)